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## The Anti-Injunction Statute And The First Amendment: The Yielding Of A Statute

### *Machesky v. Bizzell*<sup>1</sup>

The "Greenwood Movement," a civil rights group active in Greenwood, Mississippi, was prohibited as a class from picketing, marching, or demonstrating by a state court injunction. The injunction was obtained by local merchants who claimed that their businesses were being damaged by the picketing. In response to this action, members of the "Movement" brought suit in the federal district court seeking declaratory judgment and injunctive relief.<sup>2</sup> They claimed that their picketing activities were protected under the first and fourteenth amendments as well as under the Civil Rights Act of 1964 and 1968,<sup>3</sup> and that therefore the state court injunction should be vacated as violative of their rights.

The district court<sup>4</sup> refused to grant relief, reasoning that it was constrained by the federal anti-injunction statute<sup>5</sup> from interfering with state judicial proceedings except where Congress had expressly granted the power.<sup>6</sup> The court reasoned that since there was no decision in the fifth circuit holding that the Civil Rights Acts were expressly authorized exceptions to the anti-injunction statute, it "must be guided by the basic considerations of equity and comity which underlie the Anti-Injunction Statute. . . ." The court recognized that the prin-

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1. 414 F.2d 283 (5th Cir. 1969).

2. Federal jurisdiction was based on a federal question raised by the alleged violation of § 1983 of Title 42 of the United States Code dealing with deprivations of rights secured by the Constitution "under color of law." 28 U.S.C. § 1331(a) (1964).

3. 42 U.S.C. § 1983 (1964).

4. *Machesky v. Bizzell*, 288 F. Supp. 295 (N.D. Miss. 1968).

5. 28 U.S.C. § 2283 (1964): "A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."

6. *Id.* This power was given only in the three specific instances enumerated in the statute.

7. 288 F. Supp. 295, 301 (N.D. Miss. 1968).

ciples of comity may be forced to yield in the extraordinary case where grave injury would result from the infringement of constitutional rights at a state proceeding. It decided, however, that the circumstances presented did not constitute the required "extraordinary case," and hence no relief was granted.

The court of appeals reversed and remanded,<sup>8</sup> holding that since individuals were being deprived of their first amendment rights by an overbroad state judicial order, this was one of the rare cases where federal interference was warranted. The basis for this view seems to stem from the privileged status and public nature of the rights in question.<sup>9</sup> Previous courts, by construing the anti-injunction statute as a legislative enactment of the principles of comity, have used this flexible doctrine to create many exceptions to the statutory language.<sup>10</sup> Thus the court of appeals had much precedent for allowing another exception; i.e., that first amendment rights are more important than the principles of comity and that state proceedings may be enjoined to protect them. It left unanswered, however, the question of whether the Civil Rights Acts represent an "expressly authorized" exception to the anti-injunction statute.<sup>11</sup>

The significance of the decision lies in its effect on the courts as well as on the anti-injunction statute itself. It may be that the many exceptions now carved from an admittedly unclear statute<sup>12</sup> render it completely ineffective. Also, logical extensions of the holding in *Machesky*, permitting additional exceptions to section 2283, could have disruptive effects on state courts as well as overloading federal courts. Dissatisfied litigants in state proceedings would turn directly to the federal courts rather than pursue their rights of appeal within the state system. This note will examine these considerations in light of the legislative history of the statute and its interpretation in prior cases.

## I. HISTORY OF THE ANTI-INJUNCTION STATUTE

The power of the federal courts to interfere in state court proceedings was first limited by statute in 1793.<sup>13</sup> Prior to that time only the common law principles of comity controlled federal court

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8. 414 F.2d at 283.

9. These rights constitute the important public interests in the full dissemination of public expression on public issues and courts have protected them to the fullest extent. *See* *Time, Inc. v. Hill*, 385 U.S. 374 (1967); *Dombrowski v. Pfister*, 380 U.S. 479 (1965); *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964); *Stromberg v. California*, 283 U.S. 359 (1931); Brennan, *The Supreme Court and the Meiklejohn Interpretation of the First Amendment*, 79 HARV. L. REV. 1, 12-13 (1965).

10. *See* notes 31-38 *infra* and accompanying text.

11. *See* notes 52-54 *infra* and accompanying text.

12. *Cf.* Comment, *Federal Power to Enjoin State Court Proceedings*, 74 HARV. L. REV. 726, 740 (1961).

13. Act of March 2, 1793, ch. 22, § 5, 1 Stat. 334. There was actually no express power given to federal courts to issue writs of injunction although such power was probably included in the general grant of power. It may have been, therefore, that federal courts were impotent in equity until they were given specific injunctive power in 1793. *See* Act of Sept. 24, 1789, ch. 20, 1 Stat. 73; Warren, *Federal and State Court Interference*, 43 HARV. L. REV. 345, 347 (1930).

action. The original statute was without exception; it expressly stated that a federal writ of injunction should not be granted to stay proceedings in state courts.<sup>14</sup> Although there has been much speculation as to the reasons precipitating the passage of this provision of the Act of March 2, 1793, the most probable suggestion is that it reflected the prevailing prejudices of the time against equity jurisdiction.<sup>15</sup> The opposition of the states to the extension of federal jurisdiction, intensified by the decision in *Chisholm v. Georgia*,<sup>16</sup> may have added fuel to the fire. Regardless of the underlying influences, however, the statute seemed to express a basic congressional policy which continues today — the avoidance of needless friction between state and federal courts.<sup>17</sup>

There were few legislative changes to the anti-injunction statute prior to its 1948 revision.<sup>18</sup> Only two express exceptions to the statute, then section 265 of the Judicial Code,<sup>19</sup> were enacted, and only one of these was incorporated within the wording of the statute itself. In 1874 the statute was revised to except injunctions authorized by any law relating to proceedings in bankruptcy from the prohibition of the statute.<sup>20</sup> This revision was a result of a conflict between the Bankruptcy Act of 1867<sup>21</sup> and the anti-injunction statute. The Bankruptcy Act, although providing that other actions pending against a bankrupt could be "stayed" by the bankruptcy court, left doubt as to whether it granted to federal courts the power to enjoin state court proceedings. The revision settled this doubt. The Interpleader Act of 1926<sup>22</sup> provided the second express exception to the anti-injunction statute. This Act specifically empowers the federal court to enjoin claimants of the interpleaded fund from bringing suit in any state court. While the anti-injunction statute was neither mentioned in, nor

14. "... nor shall a writ of injunction be granted to stay proceedings in any court of a state." Act of March 2, 1793, ch. 22, § 5, 1 Stat. 334-5.

15. The legislative history of the statute is exceedingly sparse. Some authors have suggested that the provision was undoubtedly the consequence of a report by Attorney General Edmund Randolph to the House of Representatives in 1790 recommending changes in the existing Judiciary Act of 1789. Others have decided that it may have been a result of congressional apprehension at the danger of federal jurisdiction encroaching upon that of the states. The most adhered-to view, however, is that stated in the text — prejudice against equity jurisdiction. See *Toucey v. New York Life Ins. Co.*, 314 U.S. 118, 130-32 (1941); Taylor & Willis, *The Power of Federal Courts to Enjoin Proceedings in State Courts*, 42 YALE L.J. 1169, 1171 (1933); Warren, *Federal and State Court Interference*, 43 HARV. L. REV. 345, 347-50 (1930).

16. 2 U.S. (2 Dall.) 419 (1793).

17. See *Leiter Minerals, Inc. v. United States*, 352 U.S. 220, 225 (1957); *Oklahoma Packing Co. v. Oklahoma Gas & Elec. Co.*, 309 U.S. 4, 8-9 (1939); *Essanay Film Mfg. Co. v. Kane*, 258 U.S. 358, 360 (1922); *Wells Fargo & Co. v. Taylor*, 254 U.S. 175, 183 (1920); Warren, *Federal and State Court Interference*, 43 HARV. L. REV. 345, 372-77 (1930).

18. Compare Act of March 2, 1793, ch. 22, § 5, 1 Stat. 334-35 with Act of March 3, 1911, ch. 231, § 265, 36 Stat. 1162 and 28 U.S.C. § 2283 (1964).

19. Act of March 3, 1911, ch. 231, § 265, 36 Stat. 1162.

20. REV. STAT. § 720 (1874).

21. Act of March 2, 1867, ch. 176, § 21, 14 Stat. 526.

22. Act of May 8, 1926, ch. 273, 44 Stat. 416, as amended, 28 U.S.C. §§ 1335, 1397, 2361 (1964).

amended because of, the Interpleader Act, the express language therein can only be read as an exception to it.<sup>23</sup>

Additional legislative exceptions to the statute were created by implication in other congressional acts. The Removal Acts<sup>24</sup> which under certain circumstances authorize the removal of cases beginning in state courts to federal courts, were probably the impetus for the first departure from the anti-injunction statute. For many years, it was unclear what action might be taken by a federal court if a state court refused removal. In *French v. Hay*,<sup>25</sup> the Supreme Court finally decided that the statutory language implied that an injunction was permissible action to protect the federal court's jurisdiction. Later cases have firmly established that where a suit has been properly removed, a federal court may issue an injunction to prevent any further action in the state court.<sup>26</sup> Other exceptions to the anti-injunction statute have been implied from the Act of 1851 limiting the liability of shipowners,<sup>27</sup> the Frazier-Lemke Farm-Mortgage Act,<sup>28</sup> and the Emergency Price Control Act.<sup>29</sup> Each of these enactments contains language which prohibits the bringing of certain court actions, hence each requires equitable enforcement to be effective. The federal courts evidently reasoned that if the anti-injunction statute prevented the enjoining of state court actions prohibited in the enactment, enforcement of the enactments would be virtually impossible. They were able, therefore, to read into these enactments implied exceptions to the anti-injunction statute in much the same manner as did the court in *French v. Hay*.<sup>30</sup>

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23. See Comment, *Federal Injunctions Against Proceedings in State Courts*, 35 CALIF. L. REV. 545, 559 (1947); Comment, *Federal Power to Enjoin State Court Proceedings*, 74 HARV. L. REV. 726 (1961).

24. Originally the removal power of federal courts was set forth in the Judiciary Act of 1789, ch. 20, 1 Stat. 73. Now this federal power is codified in 28 U.S.C. §§ 1441-1450 (1964).

25. 89 U.S. (22 Wall.) 250 (1875).

26. See, e.g., *Madisonville Traction Co. v. Saint Bernard Mining Co.*, 196 U.S. 239 (1905); Taylor & Willis, *The Power of Federal Courts to Enjoin Proceedings in State Courts*, 42 YALE L.J. 1169, 1172-1175 (1933).

27. 46 U.S.C. § 185 (1964), formerly ch. 43, § 4, 9 Stat. 635 (1851). This act limits the liability of a shipowner to the value of his vessel. The specific language of the enactment states that after the owner has taken certain action, "all . . . proceedings against [him] . . . shall cease." Federal courts have interpreted this as allowing injunctions against state court proceedings contravening the act despite the anti-injunction statute. See, e.g., *Providence & N.Y.S.S. Co. v. Hill Mfg. Co.*, 109 U.S. 578, 599 (1883).

28. Act of March 3, 1933, ch. 204, § 75, 47 Stat. 1470. This act put a farmer and his property under exclusive federal jurisdiction once a petition for relief had been filed in a federal court. It provides that after such a filing, proceedings against the farmer or his property "shall not be instituted or . . . maintained in any court." Federal courts have ruled that this too allowed the enjoining of state proceedings. See, e.g., *Kalb v. Feuerstein*, 308 U.S. 433 (1940).

29. Act of January 30, 1942, ch. 26, § 205, 56 Stat. 33. This section allowed the administrator of the Office of Price Administration to secure injunctions against the violation of his orders in any court. It has been held that an injunction could issue against state proceedings which sought to enjoin the issuance of a rent order under the Act. See *Bowles v. Willingham*, 321 U.S. 503 (1944).

This exception may also have been reached based on exclusive federal jurisdiction as with the Frazier-Lemke Act. See *Porter v. Dicken*, 328 U.S. 252 (1946); Comment, *Federal Injunctions Against Proceedings in State Courts*, 35 CALIF. L. REV. 545, 560-62 (1947).

30. See notes 24-26 *supra*.

This type of reasoning typifies the attitude that federal courts had taken toward the anti-injunction statute. Rather than require Congress to include express language dealing with the equitable enforcement of the statutes they pass, the courts simply read implied injunctive powers into them, at the expense of the statute. Such interpretative analysis has allowed subsequent congressional action to operate almost outside the scope of the anti-injunction statute.

The courts themselves fashioned many exceptions to the anti-injunction statute without the aid of legislative enactments. The judge-made exceptions, along with the implied legislative exceptions, had, in the eyes of some commentators, reduced the anti-injunction statute to a "thing of threads and patches."<sup>31</sup> Two of the most familiar departures allowing injunctions against state court proceedings are the in rem exception<sup>32</sup> and the relitigation exception.<sup>33</sup> The former recognizes that a federal court may enjoin state litigation dealing with a res which was first under federal jurisdiction, while the latter permits injunctions to prevent the relitigation of issues in state courts which have already been decided in federal courts. Federal courts have also allowed the enjoining of state proceedings in cases where fraudulently obtained state court judgments are sought to be enforced<sup>34</sup> and where an unconstitutional state statute has deprived a citizen of his rights.<sup>35</sup> Finally, in instances where an injunction could be considered ancillary to the relief sought<sup>36</sup> and in cases where the United States itself is

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31. *E.g.*, Taylor & Willis, *The Power of Federal Courts to Enjoin Proceedings in State Courts*, 42 YALE L.J. 1169, 1172 (1933).

32. It has been recognized in a long line of cases that when a court, whether federal or state, takes possession of, or jurisdiction over, a res, the res is withdrawn from the reach of the other. *See* Taylor v. Carryl, 61 U.S. (20 How.) 583, (1853); Hagan v. Lucas, 35 U.S. (10 Pet.) 400 (1836). This view, however, does not apply to in personam actions. *See* Kline v. Burke Constr. Co., 260 U.S. 226 (1922). It is well settled now that the anti-injunction statute does not preclude the enjoining of state proceedings over a res which was under prior federal jurisdiction. *See* Lion Bonding & Sur. Co. v. Karatz, 262 U.S. 77, 88-89 (1923); Kline v. Burke Constr. Co., 260 U.S. 226, 229, 235 (1922); Julian v. Central Trust Co., 193 U.S. 93 (1904); Sharon v. Terry, 36 F. 337 (C.C.N.D. Cal. 1888), *aff'd*, 131 U.S. 40 (1889).

33. On the theory of protecting federal jurisdiction, the courts have allowed injunctions to prevent the relitigation in state courts of issues already decided in federal courts. *E.g.*, Supreme Tribe of Ben Hur v. Cauble, 255 U.S. 356 (1920); Dial v. Reynolds, 96 U.S. 340 (1877). *Contra*, Toucey v. New York Life Ins. Co., 314 U.S. 118, 137-139 (1941).

34. This exception bears no relation to the preservation of federal jurisdiction but merely appears to be an effort by the federal courts, in an equity capacity, to prevent the perpetration of fraud within the state system. *See* Essanay Film Mfg. Co. v. Kane, 258 U.S. 358 (1922); Wells Fargo & Co. v. Taylor, 254 U.S. 175 (1920); Marshall v. Holmes, 141 U.S. 589 (1891). *But see* Toucey v. New York Life Ins. Co., 314 U.S. 118 (1941).

35. The federal action must come prior to the state action for enforcement of the unconstitutional statute in order to avoid the anti-injunction statute. *See* Ex Parte Young, 209 U.S. 123 (1908); Taylor and Willis, *The Power of Federal Courts to Enjoin Proceedings in State Courts*, 42 YALE L.J. 1169, 1191 (1933). This is really not an exception to the anti-injunction statute but merely outside the scope of the statute. *See* Dombrowski v. Pfister, 380 U.S. 479 (1965). *See generally* 1A J. MOORE, FEDERAL PRACTICE ¶ 0.229[3], at 2641 (1965).

36. *See* Gunter v. Atlantic C.L.R.R., 200 U.S. 273 (1906). *But see* Toucey v. New York Life Ins. Co., 314 U.S. 118 (1941).

seeking the injunction,<sup>37</sup> the federal courts have found exceptions to the anti-injunction statute and have issued injunctions against state proceedings.

The relative ease with which courts produced these and other exceptions had indeed emaciated the force of the anti-injunction statute. It was virtually disregarded in any situation in which it was felt that the enjoining of state proceedings was necessary.

The "flexibility" of the anti-injunction statute, prior to 1941, seemed to stem from the fact that it was interpreted as a legislative enactment of the principles of comity.<sup>38</sup> Reliance on comity, rather than the wording of the statute, enabled the substitution of a rather discretionary doctrine for a very strictly worded statute. In addition, the statute was generally regarded as being non-jurisdictional;<sup>39</sup> that is, it does not limit federal equity jurisdiction, but rather limits the instances where federal courts may provide injunctive remedies. Exceptions to this limitation occurred whenever a federal judge felt that he might enjoin state court proceedings without offending the principles of comity,<sup>40</sup> and with the wide discretion afforded judges, this was often. It is questionable, however, whether the extensions of federal judicial power over the states is consistent with the original purpose of the statute — to promote harmony between state and federal courts.

*Toucey v. New York Life Insurance Co.*,<sup>41</sup> decided in 1941, completely reversed the prevailing view toward liberal interpretation of the anti-injunction statute. The Supreme Court ruled that a federal court could not enjoin state court proceedings as to a cause of action previously decided in a federal court against the plaintiff. This was a complete rejection of the relitigation exception to the anti-injunction statute.<sup>42</sup> While the Court recognized the in rem exception<sup>43</sup> and both the express and implied legislative exceptions, they impliedly rejected all other judicially-made exceptions to the statute. In a majority opinion by Mr. Justice Frankfurter, the Court decided that the guiding principle in interpreting the anti-injunction statute was "the duty of 'hands off' by the federal court in the use of the injunction to stay litigation in a state court."<sup>43a</sup>

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37. See *United States v. Inaba*, 291 F. 416 (E.D. Wash. 1923). But see *United States v. Parkhurst Co.*, 176 U.S. 317 (1900). This exception has been recently recognized in *Leiter Minerals, Inc. v. United States*, 352 U.S. 220 (1957).

38. See, e.g., *Smith v. Apple*, 264 U.S. 274 (1924).

39. See *Sovereign Camp Woodmen of the World v. O'Neill*, 266 U.S. 292 (1924); *Smith v. Apple*, 264 U.S. 274 (1924); *Baines v. City of Danville*, 337 F.2d 579 (4th Cir.) cert. denied, 381 U.S. 939 (1964); 1A J. MOORE FEDERAL PRACTICE ¶ 0.208 [3.-1], at 2313 (1965).

40. Judicial comity is defined as the principle in accordance with which the courts of one state or jurisdiction will give effect to the laws and judicial decisions of another, not as a matter of obligation, but out of deference and respect. BLACK'S LAW DICTIONARY (rev. 4th ed. 1968). The flexibility of this doctrine depends on the amount of discretion given the judiciary — wide discretionary powers permit general disregard of comity under many circumstances, since its recognition is not obligatory. Cf. *Douglas v. City of Jeanette*, 319 U.S. 157 (1943).

41. 314 U.S. 118 (1941).

42. See note 33, *supra* and accompanying text.

43. See note 32 *supra* and accompanying text.

43a. 314 U.S. at 132.

This decision put new life into the anti-injunction statute and significantly restricted federal interference with state court proceedings. It necessitated a literal reading of the statute and strict adherence to the principles of comity. With the discretionary power of the judges being greatly reduced, the previously malleable doctrine was made more brittle.

*Toucey* caused much confusion in this area of federal injunctions of state judicial proceedings. Prior to this case, it appeared that the courts had a free reign in finding exception to it — the statute was for all practical purposes dead. *Toucey*, however, completely reversed this view without over-ruling any previous cases.<sup>44</sup> The existing law was thus distorted because all previous cases were made to fit within the exceptions which the Court recognized.<sup>45</sup> Evidently, congressional disfavor with the interpretation of the statute in *Toucey* resulted in 1948 in its revision. For the revisor's notes indicate a clear intent to reinstate all the pre-*Toucey* exceptions within the revision.<sup>46</sup> These exceptions, all covered by the broad wording of the statute itself relating to instances when it would not apply, seemed to be an attempt to eliminate the confusion and distortion of the law resulting from *Toucey* without returning to the statute its previously ineffective form.

## II. 28 U.S.C. SECTION 2283 — THE REVISED STATUTE

The revised anti-injunction statute, section 2283 of Title 28 of the United States Code, includes three specific exceptions.<sup>47</sup> Federal courts are given the power to enjoin state court proceedings to: 1) protect and effectuate federal judgments; 2) aid in jurisdiction; and 3) comply with Acts of Congress which expressly authorize injunctions. These broad exceptions seem to encompass the numerous specific exceptions to the statute which existed prior to *Toucey*. For example, injunctions "in aid of jurisdiction" would include the exceptions implied from the removal acts<sup>48</sup> and the Act of 1851 limiting shipowners liability<sup>49</sup> as well as the in rem exception conceived by the courts.<sup>50</sup> All of these deal with the exclusive jurisdiction of federal courts over a certain subject. Injunctions to "protect and effectuate judgments" clearly reinstated the relitigation exception<sup>51</sup> and over-ruled the narrow

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44. It may be that cases allowing the relitigation exception were impliedly over-ruled, e.g., *Supreme Tribe of Ben Hur v. Cauble*, 255 U.S. 356 (1920), but the opinion itself did not expressly over-rule a single case. Rather it attempted to fit all existing cases into the exceptions which it recognized.

45. See 314 U.S. at 139-40; Comment, *Federal Power to Enjoin State Court Proceedings*, 74 HARV. L. REV. 726 (1961). See also 1A J. MOORE, FEDERAL PRACTICE ¶ 0208[2], 1965.

46. 28 U.S.C. § 2283 (1964) (Historical and Revision Notes).

47. 28 U.S.C. § 2283 (1964) provides that a court of the United States may not grant an injunction to stay proceedings in a state court except:

- 1) as expressly authorized by Congress,
- 2) where necessary in aid of its jurisdiction,
- 3) to protect and effectuate its judgments.

48. See note 24 *supra* and accompanying text.

49. See note 27 *supra* and accompanying text.

50. See note 32 *supra* and accompanying text.

51. See note 33 *supra* and accompanying text.



holding in *Toucey*. Finally, injunctions "expressly authorized by Act of Congress" include the express exceptions created by the Interpleader Act of 1926<sup>52</sup> and the Bankruptcy exception<sup>53</sup> within the old statute. The interpretation of "expressly authorized," due to the myriad of federal statutes providing equitable remedies, is potentially very expansive.<sup>54</sup>

The Revisor's note to section 2283 makes it clear that the revised section restores the basic law as generally understood prior to *Toucey*. It is not apparent, however, whether the intent of the statute's framers was to merely restore the pre-*Toucey* exceptions or also to restore the wide discretion which the courts had exercised prior to *Toucey* in finding new exceptions. The broad and carefully enumerated exceptions within section 2283 would seem to imply that these were the only exceptions to be recognized,<sup>55</sup> for the statements are broad enough to allow judicial discretion in interpreting them but not so broad as to make the statute meaningless. Hence it would seem that the judicial power to create new exceptions to the statute was eliminated.

Indeed, courts have been slow to find new exceptions to section 2283 in the twenty-two years since its passage. The pre-*Toucey* view of virtual disregard for the statute has been greatly tempered. Although most courts now recognize that the mandate of section 2283 may be disregarded in the extraordinary case where compelling reasons so warrant,<sup>56</sup> there have been few cases where such an extraordinary case has been presented.<sup>57</sup> Perhaps the reason for this was the caveat issued by the Supreme Court in *Amalgamated Clothing Workers of America v. Richman Brothers Co.*<sup>58</sup> There it was stated that "[b]y that enactment [section 2283], Congress made clear beyond cavil that the prohibition is not to be whittled away by judicial improvisation."<sup>59</sup> At any rate it appears from existing cases that lower federal courts much prefer to fit injunctions issued against state proceedings

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52. See note 22 *supra* and accompanying text.

53. See note 20 *supra* and accompanying text.

54. It is unclear whether the Civil Rights Acts, 42 U.S.C. § 1983 (1964), constitute an exception to the anti-injunction statute "expressly authorized" by Congress and the court in this case did not decide the question. It is still open whether an enactment must *expressly* provide for the enjoining of state proceedings to fall under this exception. *Cameron v. Johnson*, 381 U.S. 741 (1965). *But see Cooper v. Hutchinson*, 184 F.2d 119 (3d Cir. 1950). In the context of a general grant of injunctive power in section 10(1) of the Labor Management Relations Act, 29 U.S.C. § 160(1) (1964), as an express authorization of Congress, see *Capital Service, Inc. v. NLRB*, 347 U.S. 501 (1954); cf. *Amalgamated Clothing Workers v. Richman Bros. Co.*, 348 U.S. 511 (1955).

55. *Amalgamated Clothing Workers v. Richman Bros. Co.*, 348 U.S. 511 (1955).

56. *E.g.*, *Baines v. City of Danville*, 337 F.2d 579, 593 (4th Cir.) *cert. denied*, 381 U.S. 939 (1964).

57. *Id.* Courts as in *Baines* have recognized that the statute may be overlooked in extraordinary cases but they have not found many such cases.

58. 348 U.S. 511 (1955). It must be noted that the opinion here is by Mr. Justice Frankfurter who also wrote the *Toucey* opinion. This case construes the new statute, § 2283, in the same manner that *Toucey* construed the old statute, § 265 of the Judiciary Act of 1911. *But see Leiter Minerals, Inc. v. United States*, 352 U.S. 220 (1957), which found, in another opinion by Mr. Justice Frankfurter, a new exception to § 2283 — where the United States itself is a party in interest.

59. 348 U.S. at 514.

within the existing exceptions in the statute, even if some stretching is required, rather than risk reversal in creating a new exception.<sup>60</sup>

Early cases following the 1948 revision interpreted the statute very strictly. The Court in *Richmond Brothers* applied section 2283 literally by refusing to vacate a state court injunction prohibiting a labor union from picketing at a corporation's place of business. The union brought suit in the federal court claiming that the matter was under the exclusive jurisdiction of the National Labor Relations Board, and hence the state court had no jurisdiction. The majority, finding both that there was never an exception to the old version of the statute which would allow an injunction to protect the jurisdiction of administrative agencies, and that the case did not fall within the exceptions in section 2283, refused relief. Although it may have been possible to find an exception to section 2283 "in aid of its jurisdiction" or as "expressly authorized by Congress" through a broad interpretation of the statutory language, the Court construed the statute narrowly, reasoning that section 2283 was not a statute of broad general policy, but rather was a clear cut prohibition qualified only by specifically defined exceptions.<sup>61</sup>

Nevertheless, there was a new exception created a short time later in *Leiter Mineral, Inc. v. United States*.<sup>62</sup> There the same Court which decided *Richmond Brothers* held that the anti-injunction statute did not apply to injunctions sought by the United States. The United States sought to enjoin a state court proceeding over title to mineral rights it allegedly owned and, at the same time, brought a federal suit to quiet title. The Supreme Court upheld the granting of the injunction, not under any statutory exception to section 2283, but rather as an old and well known rule ". . . that statutes which in general terms divest pre-existing rights (rights of federal courts apart from the statute) . . . will not be applied to the sovereign without express words to that effect."<sup>63</sup> In other words, federal or public rights cannot be hindered by implication in statutes. While a new exception was thus created, *Leiter Minerals* was consistent with the view that, at least in cases where the United States was not directly concerned, there was a disposition toward strict construction of section 2283.<sup>64</sup>

In *Baines v. City of Danville*<sup>65</sup> the Court recognized that there were exceptional cases where the statute could be over-looked and state proceedings enjoined, but only as a means of avoiding grave and

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60. See *Tampa Phosphate R.R. v. Seaboard C.L.R.R.*, 418 F.2d 387 (5th Cir. 1969); *Studebaker Corp. v. Gittlin*, 360 F.2d 692 (2d Cir. 1966); Cf. *Baines v. City of Danville*, 337 F.2d 579 (4th Cir.), *cert. denied*, 381 U.S. 939 (1964).

61. 348 U.S. at 515.

62. 352 U.S. 220 (1957).

63. *Id.* at 224.

64. See, e.g., *Baines v. City of Danville*, 337 F.2d 579, 590 (4th Cir.), *cert. denied*, 381 U.S. 939 (1964). Also the principle that the United States is immune from the bar of § 2283 is inapplicable to governmental boards, agencies, and corporations unless they can be properly equated to the sovereign. 1A J. MOORE, *FEDERAL PRACTICE* ¶ 0.208[3.-1], at 2315 (1965).

65. 337 F.2d 579 (4th Cir.), *cert. denied*, 381 U.S. 939 (1964).

irreparable injury. They refused, however, to find such an exception in this group of cases involving a state court injunction against civil rights picketing and state criminal prosecutions of Negro picketers for violation of local ordinances. Similar reasoning had been used previously in *Stefanelli v. Minard*,<sup>66</sup> a case where a criminal defendant in a state proceeding sought a federal injunction against the use of alleged unlawfully seized evidence against him. The request was refused on the ground that there was no threat of irreparable injury. The Court also considered the consequences of such an injunction and decided that extensive disruption in state criminal proceedings would result should it be issued.

These cases are typical of the view of federal courts toward the anti-injunction statute prior to *Machesky*. They have been hesitant to find new exceptions to section 2283 unless the United States itself is involved. The courts evidently recognized the possibility that in some cases the statute might be over-looked and state proceedings enjoined, but they had not, before *Machesky*, found instances where such action was warranted.

### III. A NEW EXCEPTION TO SECTION 2283 — WHEN FIRST AMENDMENT RIGHTS ARE VIOLATED BY STATE COURTS

The court in *Machesky* held that where important first amendment rights are violated by state court proceedings,<sup>67</sup> these proceedings may be enjoined by a federal court despite section 2283. This holding was based on the rationale that the principles of comity embodied in the anti-injunction statute must yield where important public interests to full dissemination of expression on public issues are abridged.<sup>68</sup> Although the court felt that the situation was extraordinary warranting departure from section 2283, it failed to consider whether any irreparable injury resulted from the state proceedings.<sup>69</sup> Thus, it may well be that under *Machesky*, infringement upon public rights by state courts is *per se* an exception to the anti-injunction statute.

The court did not reach the question of whether the Civil Rights Acts<sup>70</sup> provided an "expressly authorized" exception to section 2283.

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66. 342 U.S. 117 (1951).

67. "Proceedings" include all steps taken or which may be taken in state court or by its officers from institution to close of final proceedings and includes any action taken to enforce a state court judgment. *Hill v. Martin*, 296 U.S. 393 (1935).

68. 414 F.2d at 291.

69. The cases which have recognized that the anti-injunction statute may be overlooked in some extraordinary cases usually require that the injunction requested be the only means to avoid grave and irreparable injury. See *Sovereign Camp Woodmen of the World v. O'Neill*, 266 U.S. 292 (1924); *Smith v. Apple*, 264 U.S. 274 (1924); *Baines v. City of Danville*, 337 F.2d 579, 593 (4th Cir.), *cert. denied*, 381 U.S. 939 (1964).

In *Dombrowski v. Pfister*, 380 U.S. 479 (1965), it was held that federal equitable relief was proper to prevent a substantial impairment of freedom of expression through prosecution under an excessively broad state statute regulating expression. The *Machesky* court evidently felt that this represented *irreparable injury* to appellants in *Dombrowski*. They therefore viewed the excessively broad state court order regulating expression as causing the same type of irreparable injury.

70. 42 U.S.C. § 1983 (1964).

The Supreme Court has described this as an open question,<sup>71</sup> and the *Machesky* court evidently did not want to infringe on the power of the higher court by deciding it. Also, the broad consequences of an affirmative answer certainly were considered when the court decided not to reach the question.<sup>72</sup> If section 1983 of the Civil Rights Act was considered an "expressly authorized" exception, federal courts might be forced to intervene in state criminal as well as civil proceedings in which Civil Rights Acts violations were present. Although a federal court could employ the doctrine of abstention,<sup>73</sup> it is doubtful that it would in most cases. Hence, this could precipitate a great number of federal suits attempting to enjoin state proceedings and have a disruptive effect on both state and federal courts. This would certainly contravene the principle behind the anti-injunction statute — the avoidance of friction between state and federal courts. Still, it may be that finding an "expressly authorized" exception within the statute would be preferable to creating an entirely new exception at the expense of statutory language.

By deciding the case the way it did, the court in *Machesky* left the decision as to whether to depart from section 2283 and enjoin state court proceedings dealing with civil rights to be decided on a case by case basis. Although, as said previously, there may be some who interpret *Machesky* as permitting an exception to section 2283 whenever public rights are infringed in state proceedings, a better reading would be that the facts and circumstances of each case should be examined to see if the extraordinary case warranting federal injunction is made out. This was essentially the status of the law before the decision, except that now the still unclear requirements for over-looking section 2283 have been made less stringent, and the federal courts have been given greater discretion.<sup>74</sup>

In applying first amendment rights through the fourteenth amendment to the states, the court must find state action. Although this question was left to be decided by the district court on remand, undoubtedly the state action requirement may be fulfilled by the action

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71. See *Cameron v. Johnson*, 390 U.S. 611 (1968); *Dombrowski v. Pfister*, 380 U.S. 479 (1965).

72. Cf. *Stefanelli v. Minard*, 342 U.S. 117, 123 (1951). Here the consequences of federal interference with state criminal proceedings through the Civil Rights Act were considered. It was decided that such interference would be extremely disruptive to both courts and no injunction was issued. See also 50 CALIF. L. REV. 718 (1962).

73. This is the discretionary doctrine under which a federal court may decide not to intervene in state court action even if they have the power. The federal court will direct the parties to pursue state court remedies while sometimes retaining jurisdiction and awaiting the outcome of the state court litigation. If this outcome meets with federal disapproval, then action may be taken to prevent its enforcement. Normally, however, if the doctrine is invoked, the federal courts will stay completely out of the case. For a discussion of the relation between the abstention doctrine and the federal anti-injunction statute, see Knowlton, *The Federal Anti-Injunction Statute and the Related Abstention Doctrine*, 21 S.C.L. Rev. 313 (1969).

74. Compare *Machesky v. Bizzell*, 414 F.2d 283 (5th Cir. 1969) with *Baines v. City of Danville*, 337 F.2d 579 (4th Cir.), cert. denied, 381 U.S. 939 (1969) and *Amalgamated Clothing Workers of America v. Richman Bros. Co.*, 348 U.S. 511 (1955).

of state courts as in *Shelley v. Kramer*.<sup>75</sup> It was suggested, however, that on remand the district court analogize the state court order with the case where first amendment rights have been restricted by unconstitutional municipal ordinances to make more clear the state or local action.<sup>76</sup> Further discussion of this problem is not warranted, and it will suffice to say that the district court should not have any trouble in finding state action.

Perhaps the leading case dealing with the infringement by a state on the type of public rights in question<sup>77</sup> is *Dombrowski v. Pfister*.<sup>78</sup> While this case was distinguished in *Machesky* on the facts, its rationale was nevertheless helpful in determining the status of the constitutional rights involved. In *Dombrowski*, a civil rights group sought a federal injunction against the enforcement, by state officials, of an allegedly unconstitutional subversive activities law against members of the group. The Supreme Court reversed and remanded a district court decision refusing relief, finding that the enforcement of the statute would impair the freedom of expression to the point of causing irreparable injury to appellants. Equitable relief was therefore appropriate. They read section 2283 as not precluding an injunction against the institution of state proceedings but only a bar to enjoining suits already instituted,<sup>79</sup> hence the enforcement of the law in question could be prevented. The *Machesky* court distinguished the case since the injunction issued there did not come within the scope of the anti-injunction statute. Still *Dombrowski* was clearly directed to protecting first amendment rights, the primary principle of the *Machesky* decision and may give some support to the *Machesky* holding.

Similar reasoning appears later in *City of Greenwood v. Peacock*.<sup>80</sup> That opinion contains dictum which, as interpreted in *Machesky*, is to the effect that if the interests sought to be protected by *Dombrowski* are offended by a state court proceeding, that proceeding may be enjoined despite section 2283. While this reading of *City of Greenwood* may be somewhat strained,<sup>81</sup> it reiterates the importance of

75. 334 U.S. 1 (1948). This case held that the actions of state courts and judicial officers in their official capacities are actions of the states within the meaning of the fourteenth amendment.

76. 414 F.2d at 286.

77. *E.g.*, Picketing, marching, general dissemination of civil rights information, organizing civil rights movements and their activities, etc.

78. 380 U.S. 479 (1965).

79. *Id.* at 484 n.2. See *Hill v. Martin*, 296 U.S. 393 (1935), which defined "proceedings" as all steps from the institution of a suit to the close of final process. But see *Ex Parte Young*, 209 U.S. 123, 156 (1908).

80. 384 U.S. 808 (1966).

81. *Id.* at 829. The court in *Greenwood* stated that where a state court proceeding would deny an individual his rights under the first amendment, he "may under some circumstances obtain an injunction in federal court." The *Machesky* court interpreted this as meaning that a state proceeding may be enjoined any time these rights are offended regardless of the anti-injunction statute. It is more probable, however, that the term "some circumstances" was merely referring to the specific exceptions within § 2283 — so that an injunction could issue only where the circumstances fell within these exceptions. Another possibility is "under some circumstances" could be only before state proceedings were instituted as in *Dombrowski v. Pfister*, 380 U.S. 479 (1965). At any rate, this dictum is at best unclear and reliance on it by *Machesky* is tenuous.

*Dombrowski* in defining interests which warrant protection from state courts,<sup>82</sup> and what steps may be taken in protecting them. While neither of these cases dealt directly with the anti-injunction statute, they do show the disposition of the Supreme Court toward protecting civil rights groups from state persecution. The *Machesky* court evidently felt that the rights to freedom of expression for these groups could therefore be considered paramount to judicial principles of comity.<sup>83</sup> There was no precedent, however, for such a holding in the face of section 2283, despite its historical background,<sup>84</sup> so existing case law had to be extended to create a new exception to the anti-injunction statute.

Limiting somewhat their opinion, the court in *Machesky* spoke primarily of *public rights* protected by the first amendment. They purposely excluded any rights under the first amendment which may be termed as *private rights*. The distinction between the two seems anything but clear. Public rights are described as relating to the citizen in his capacity as a governor — his right to vote, to disseminate information, to influence public opinion, among others.<sup>85</sup> Private rights, on the other hand, are those relating to the citizen as one of the governed — his subjectivity to criminal laws, his rights to governmental protection for his private affairs, etc.<sup>86</sup> There seems little reason to break down these rights so minutely, other than perhaps to narrowly limit the holding in the case. Also, it is possible that such a distinction was a convenient way in which the court could find support for its disregard of section 2283.

The *Machesky* court relied on an extension of the reasoning espoused in *Leiter Minerals, Inc. v. United States*,<sup>87</sup> which held that section 2283 was inapplicable to injunctions sought by the United States. It was decided that the potential frustration of superior federal interests resulting from a literal application of section 2283 to the United States could not have been the intent of Congress. This reference to national interests — superior federal interests — was

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82. An example is public interests, specifically civil rights demonstration activities. Note also that the court in *Dombrowski* chose not to invoke the abstention doctrine (see note 73, *supra*), showing that they felt that some federal action was proper.

83. See generally Comment, *Federal Removal and Injunction to Protect Political Expression and Racial Equality: A Proposed Change*, 57 CALIF. L. REV. 694 (1969).

84. Many cases have espoused the view that the principles of comity may yield in order to prevent grave and irreparable injury. *E.g.*, *Sovereign Camp Woodmen of the World v. O'Neill*, 266 U.S. 292 (1924); *Smith v. Apple*, 264 U.S. 274 (1924). Even though § 2283 is supposedly a legislative enactment of the principles of comity, no cases have held that the statute must yield to prevent injury. The statute has yielded only within the specific exceptions contained in it and when the United States itself has sought relief. It has been speculated in some cases however, like *Baines v. City of Danville*, 337 F.2d 579 (4th Cir.), *cert. denied*, 381 U.S. 939 (1964), that § 2283 would yield in the extraordinary case where irreparable injury was shown.

The *Machesky* court extended this speculation into a holding and then proceeded to find that the "extraordinary case" did exist and that federal interference was therefore proper.

85. See 414 F.2d at 288-90; Brennan, *The Supreme Court and the Meiklejohn Interpretation of the First Amendment*, 79 HARV. L. REV. 1, 12-13 (1965).

86. See 414 F.2d at 289; *cf.* *Stefanelli v. Minard*, 342 U.S. 117 (1951).

87. 352 U.S. 220 (1957).

interpreted by *Machesky* as including, by implication, all public rights. This was a starting point for the conclusion that section 2283 could be overlooked in order to protect public rights.

*Studebaker Corp. v. Gittlin*,<sup>88</sup> which involved a stockholder suit charging corporate violation of S.E.C. regulations, was cited as support for the proposition that a private party, not just the United States, could obtain an injunction against state proceedings to protect public rights. The case did point out the importance of federal or public interests, but did not really create a new exception to section 2283. Rather section 16 of the Clayton Act<sup>89</sup> was read as an "expressly authorized" exception to section 2283, allowing a private individual as well as the S.E.C. itself to obtain injunctions.<sup>90</sup> It would seem, therefore, that this distinction between public rights and private rights is important simply in determining whether an "expressly authorized" exception to section 2283 exists.<sup>91</sup> At any rate, protection of public rights was not, prior to *Machesky* grounds for finding a new exception to the anti-injunction statute where the United States was not a party.<sup>92</sup>

While these cases offered no direct support for the action taken in *Machesky*, the cognizance they took of public rights was significant. The favorable treatment these rights received, in relation to section 2283, helped the court to determine that the extraordinary case warranting federal interference did exist. If *Gittlin* allowed an exception within the statute to protect public rights, then it was within the *Machesky* court's discretion, as they reasoned, to form a new exception to protect the same type of rights.

#### IV. CONCLUSION

In reaching the desired result, the *Machesky* court could have determined that section 1983 of the Civil Rights Act of 1964<sup>93</sup> was, because it provides equitable and other appropriate relief for deprivations of basic constitutional rights under color of law, within the statutory "expressly authorized" exception to section 2283. Such a holding would have, at least superficially, preserved the integrity of the words

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88. 360 F.2d 692 (2d Cir. 1966).

89. 15 U.S.C. § 26 (1964).

90. Cf. *Amalgamated Clothing Workers of America v. Richman Bros. Co.*, 348 U.S. 511 (1955); *International Union of Electrical Workers v. Underwood Corp.*, 219 F.2d 100 (2d Cir. 1955). The situation in labor relations is different since the sole power to seek injunctive relief to prevent violations of the National Labor Relations Act is with the National Labor Relations Board. 29 U.S.C. §§ 160 (d), 160 (1) (1964).

91. See, e.g., *Tampa Phosphate R.R. v. Seaboard C.L.R.R.*, 418 F.2d 387 (5th Cir. 1969), which used reasoning similar to that in *Gittlin* to allow a corporation to enjoin the attempted state court suit of another corporation. The first corporation's land was being condemned by the second in violation of § 1(18) of the Interstate Commerce Act, 49 U.S.C. § 1(18) (1964). The court decided that the Interstate Commerce Act provided an "expressly authorized" exception to § 2283, allowing the injunction but did not create a new exception to the anti-injunction statute.

92. See *Baines v. City of Danville*, 337 F.2d 579, 590 (4th Cir.), cert. denied, 381 U.S. 939 (1964).

93. 42 U.S.C. § 1983 (1964).

of section 2283 and conformed to the prevailing view that the statute is to be read strictly. The court rejected this course. Its prevailing consideration was probably that such a holding would open the door for an unwelcomed number of litigants and defendants to try to escape the justice available on the state level. Although the abstention doctrine would still be available to block the flood, the result nevertheless would be potentially disruptive of the principles of comity the anti-injunction statute is supposed to reflect.

As an alternative, the *Machesky* court gave life to a new exception to the anti-injunction statute with seeming disregard for the teachings of Frankfurter in *Toucey* and the theory behind the subsequent reenactment of the statute. The exception is based on the overriding importance of the public rights involved in the case; i.e., the political rights of free expression embodied in the first amendment. The court felt that the principles of comity embodied in the statute should not be allowed to prevent protection of these rights. The holding can be taken on two levels. One espousing a Frankfortian outlook might bemoan the beginning of a return to the pre-*Toucey* approach to the anti-injunction statute. The "clear-cut prohibition qualified only by specifically defined exceptions" referred to in *Richmond Brothers*<sup>94</sup> may well be seen as giving way to a new series of judicially-fashioned exceptions. On the other hand, one can view the *Machesky* rationale as being compelled by previous Supreme Court cases, such as *Dombrowski*, dealing with first amendment rights.

*Dombrowski* granted an injunction against the institution of state proceedings on the ground that comity and abstention principles must yield in the face of the need to protect the first amendment freedoms. The fact that the state proceedings had been instituted in *Machesky* (which, in contrast to *Dombrowski*, makes section 2283 applicable) should not require a different result. As has been shown in the past, exceptions have been read into the statute where federal legislation bars the bringing of state actions even though the statute is only supposed to apply when the state proceedings have already commenced.<sup>95</sup> This would indicate that the two situations are not always kept distinct, the theory being that if you enjoin the bringing of the action then in order to make the legislation effective, you must be equally as able to enjoin the action after it has begun. *Dombrowski*, in allowing the injunction prior to the commencement of the state action, could be viewed as requiring the *Machesky* result on the same rationale. In addition, viewing the anti-injunction act as an embodiment of the principles of comity, its application should not require a different result than was reached in *Dombrowski*. In essence, both cases involve the weighing of considerations of federalism against the guarantees of the first amendment. Logic and consistency would seem to demand that the scales register the same result each time.

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94. See note 61 *supra*.

95. See notes 27-30 *supra* and accompanying text.